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10/761,830

01/20/2004

David J. Lutz

10448-002

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06/29/2006

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EXAMINER

CAJILIG, CHRISTINE T

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,830

Applicant(s)

LUTZ, DAVID J.

Examiner

Christine T. Cajilig

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>05/03/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Smith (U.S. 5,341,767) listed in the specification is not listed in the IDS.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inlet in claims 1 and 7, the head comprising a peaked end in claim 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities: "HG" in paragraph 11, line 2 is misspelled; "F.IG." in paragraph 22, line 2 is misspelled; the use of the number "10" in paragraph 19, line 1 is unclear.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A written description of a ventilation pipe protector head comprising a peaked end opposite an end of the head attached to the sleeve as stated in claim 3 is not present in the specification. Furthermore, the specification does not state that an embodiment of a cap apex with a perch-prevention point could apply to other embodiments.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1 and 7, and accordingly, dependent claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claims 1 and 7 are indefinite because the preamble only recites a ventilation pipe protector. However, the body of the claims positively recites a ventilation pipe and defines the dimensions of a ventilation pipe protector with respect to a ventilation pipe. Therefore, it is unclear whether the claims are directing to a combination of the ventilation pipe and the pipe protector or just a pipe protector per se. For purpose of examination the claims are considered as directed to the pipe protector.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1,2,4, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Hernandez (U.S. Pub. No. 2003/0110554 A1).

13. Regarding claim 1, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising:

- a. a tubular sleeve (14') having a sleeve outside diameter (d) smaller than a ventilation pipe (50) inside diameter (b), the sleeve (14') comprising an inlet end (a) for receiving a gas.
- b. a hollow head (10') attached to an end of the sleeve opposite the inlet end (16) to allow the gas to flow from the sleeve (14') into the head (10'), the head (10') having a head outside diameter (e) larger than the sleeve outside diameter (d) and comprising a plurality of passageways (f,18') sized to allow egress of the gas from the head and to prevent ingress of animals and debris into the head.

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14. Regarding claim 2, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising a head (10') with a convex shaped end (60) opposite an end of the head attached to the sleeve (16').

15. Regarding claim 4, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising a head outside diameter (e) that is larger than a ventilation pipe (50) outside diameter (c).

16. Regarding claim 7, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising:

- a. a tubular sleeve (14') having a sleeve outside periphery (d) smaller than a ventilation pipe (50) inside periphery (b), the sleeve (14') comprising an inlet end (a) for receiving a gas.
- b. a hollow head (10') attached to an end of the sleeve opposite the inlet end (16) to allow the gas to flow from the sleeve (14') into the head (10'), the head (10') having a head outside periphery (e) larger than the sleeve outside periphery (d) and comprising a plurality of passageways (f, 18') sized to allow egress of the gas from the head and to prevent ingress of animals and debris into the head.

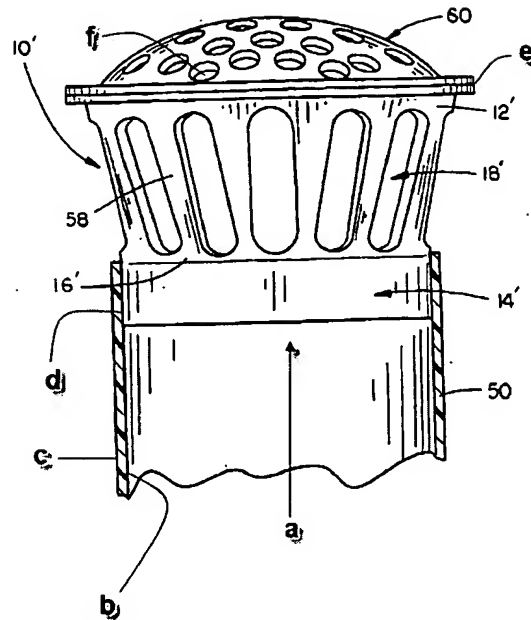


FIG. 6

Hernandez (U.S. Pub. 2003/0110544 A1)

Claim Rejections - 35 USC § 103

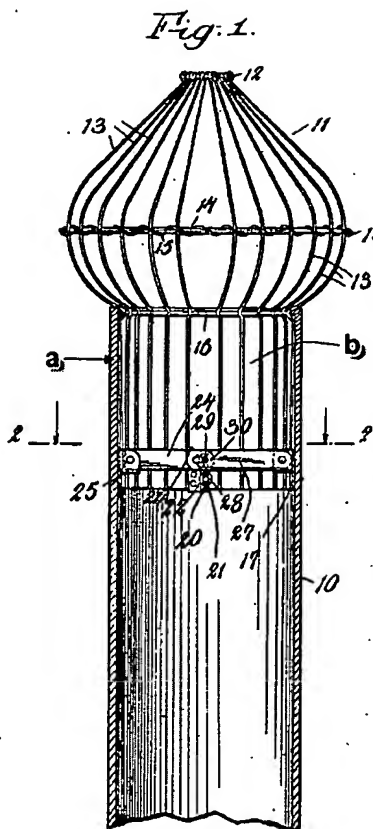
17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of McDonald (U.S. Patent No. 5,291,707). Regarding claim 3, Hernandez discloses the limitations as discussed above, but does not disclose a head comprising a peaked end opposite an end of the head attached to the sleeve. However, McDonald in Figure 3, teaches a vent bird protector with a head (36)

comprising a peaked end (26) opposite an end of the head attached to the sleeve (39). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a head comprising a peaked end opposite an end of the head attached to the sleeve as taught by McDonald to prevent birds from perching on the stack (Col 1, Ln 58-60).

19. Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Levy (U.S. Patent No. 926,704). Hernandez discloses the limitations as discussed above, but does not disclose the sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into the sleeve. However, Levy in Figure 1, teaches a vent strainer with a sleeve (a) comprising a plurality of passageways (b) sized to allow the gas to flow from the ventilation pipe into the sleeve. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into the sleeve as taught by Levy to provide a sleeve that can be readily attached onto the ventilation pipe (Page 1, Ln 9-16).



Levy (U.S. Patent No. 926,704)

20. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Brenner (U.S. Patent No. 2,768,007). Hernandez discloses the limitations as discussed above, but does not disclose a washer disposed around the sleeve and abutting the head, the washer comprising a washer inside diameter larger than the sleeve outside diameter and smaller than the head outside diameter, and an outside diameter larger than the ventilation pipe outside diameter. However, Benner in Figure 9, teaches a washer (20) disposed around the sleeve (18) and abutting a head (f), the washer (20) comprising a washer inside diameter (b) larger

than the sleeve outside diameter (d) and smaller than the head outside diameter (a), and an outside diameter (c) larger than the pipe (10) outside diameter (e). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a washer disposed around the sleeve and abutting the head, the washer comprising a washer inside diameter larger than the sleeve outside diameter and smaller than the head outside diameter, and an outside diameter larger than the ventilation pipe outside diameter as taught by Benner to allow any diameter sleeve and head to fit into a pipe with a larger diameter without falling through (Col 2, Ln 30-37).

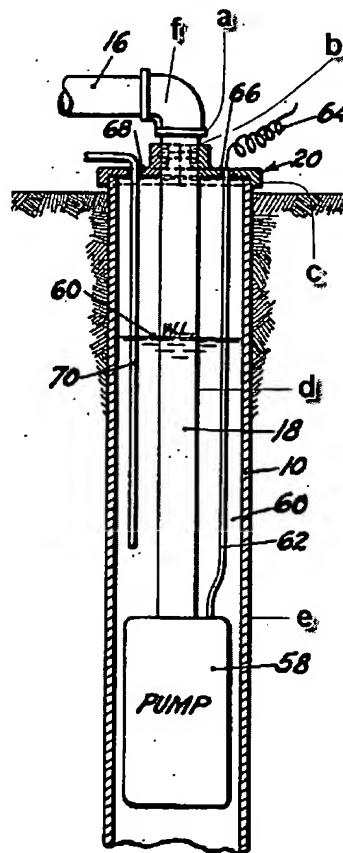


FIG. 9

Brenner (U.S. Patent No. 2,768,007)

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wilkerson (U.S. Patent No. 4,398,453) a vent cap with a flue pipe connector; Ward (U.S. Patent No. 5,456,050) a circular flange for securing a pipe through a hole; Miller (U.S. Patent No 115,339) a perforated peaked ventilation pipe cover.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/23/06

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

A handwritten signature in black ink, appearing to read "Lanna Mai", with a long horizontal flourish extending to the right.